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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 57 OF 2000

DIVISION BENCH: **HON. SHRI L.C. BHADOO, &**
HON. SHRI DHIRENDRA MISHRA, JJ

Appellant : Nageshwar

Versus

Respondent : The State of M.P. through

JUDGMENT FOR CONSIDERATION

Sd/-
JUDGE
/04/2007

HON'BLE SHRI JUSTICE L.C. BHADOO Dhirendra Mishra.

Sd/-
Dhirendra Mishra
Judge

POST FOR JUDGMENT ON 23-04-2007

Sd/-
L.C. Bhadoo
Judge

(27)

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CRIMINAL APPEAL NO. 57 OF 2000

DIVISION BENCH: **HON. SHRI L.C. BHADOO, &**
HON. SHRI DHIRENDRA MISHRA, JJ

Appellant : Nageshwar, S/o Thakur Prasad Khairwar, age 39 years, occupation – agriculture, R/o. Bhelkach, PS. Ramkola, Distt.- Sarguja (Chh.)

Versus

Respondent : The State of M.P. through P.S. Ramkola, Distt. Sarguja (Chh.)

Presence:
Mr. A.K. Prasad, counsel for the appellant.
Mr. U.N.S. Deo, Addl. Public Prosecutor for the State.

J U D G M E N T
(Delivered on 23rd April 2007)

PER L.C. BHADOO, J

By this appeal under Section 374 (2) of the Code of Criminal Procedure the accused/appellant has questioned the legality and correctness of the judgment of conviction and order of sentence dated 20th November 2000 passed by Additional Sessions Judge, Surajpur in Sessions Trial No.144/92, whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under Section 302 of the IPC, sentenced him to undergo imprisonment for life and pay a fine of Rs.1,000/-, in default of payment of fine to further undergo five months R.I.

2. Case of the prosecution, in brief, is that in the night of 16.9.1991 at about 10.00 p.m. accused/appellant Nageshwar came to the house of Shrawan Kumar and invited him at the dinner at his residence. Shrawan Kumar went along with Nageshwar. Thereafter, Shrawan Kumar did not return in the night. On the next day morning at about 6.30 a.m. Ramdev @ Paklu went to the house of Shrawan Kumar and informed his brother Dilip Kumar (PW-1) that wife of Nageshwar has informed him that life of Shrawan Kumar is in

danger, therefore, his family members be informed. On receiving this information Dilip Kumar along with Shobhit went to the house of Nageshwar, thereafter went to Police Station Ramkola and lodged the written report Ex.P/1, on which Head Constable along with two constables left the police station for the house of Nageshwar. On their asking the door was opened and Dilip saw that the dead body of his brother was lying in *Parchhi.* There were injuries on his neck, hand and wrist caused by sharp edged weapon. Inquest (Ex.P/11) was prepared on the dead body of Shrawan Kumar. Merg intimation (Ex.P/2) and Dehati Nalishi (Ex.P/3) were given by Dilip Kumar. Based on that, Police Station Ramkola registered crime No. 75/91. Dead body of Shrawan Kumar was sent for postmortem examination to Government Hospital, Pratappur under Ex.P/4 where Dr. Shivlal Paikra (PW-6) conducted the postmortem on 18.9.1991. He opined that cause of death is shock due to hemorrhage because great vessels of neck were cut. Death was homicidal. He noticed six incised wounds and bruises on the body of deceased. Memorandum Ex.P/13 was given by the accused and based on that, weapon of offence Tabbal was recovered at the instance of the accused under Ex.P/13 from his house.

3. After completion of investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Surajpur who in turn committed the case to the Sessions Judge, Sarguja from where learned Additional Sessions Judge, received the case on transfer for trial.

4. Prosecution examined eight witnesses at the trial in order to establish the charge against the accused. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime. One witness namely Moharsai (D.W.1) was examined by the accused in his defence.

5. Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused as aforementioned.

6. We have heard Mr. A.K. Prasad, learned counsel appearing on behalf of the accused/appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor for the State/respondent.

7. Mr. Prasad has not disputed the homicidal death of Shrawan Kumar. Moreover, Dr. Shivlal Paikara (PW-6) who conducted postmortem on the body of deceased Shrawan Kumar on 18.9.1991 has stated that following injuries were found on the body of Shrawan Kumar:

(i) incised wound in the size of 1 ½" x 1" x 1" on the wrist on right hand; ulna bone was cut completely;

(ii) incised wound 2 ½" x ½" x ½" on the palm of the right hand;

(iii) incised wound in the size of 2 x ½" x ½" over palm of the right hand;

(iv) incised wound in the size of 8" x 1" x ½" over left side of face and cheek and was extending behind the head, clotted blood was present;

(v) incised wound in the size of 1 ½" x ½" x ½" on the wrist of the left hand, bone was cut, clotted blood was present;

(vi) incised wound in the size of 5 x 2 ½" x 1 ½" on the right side of the neck and collar bone, the injury was extending from middle of right and left collar bone up to right scapular region, collar bone was cut, cervical and vertebra were cut to a certain extent. All the great vessels and mussels were cut, windpipe was also cut;

(vii) bruise in the size of 1 ½" x 1 ½" on the knee, there were other bruises on the left hand and shoulder. Brain and brain membrane were contested, both the chambers of the heard were empty, windpipe and foodpipe were cut and death was homicidal in nature.

Therefore, in view of above medical evidence it is established that death of Shrawan Kumar was homicidal in nature.

8. As far as involvement of the accused/appellant in the crime in question is concerned, there is no ocular or direct evidence in this

case. The whole case rests upon circumstantial evidence. As per the settled law to base conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. Suspicion, however grave it may, cannot be a substitute for a proof and the courts should take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence.

9. In the present case, the circumstances relied upon by the prosecution to connect the accused with crime in question are that (i) in the night of 16.9.1991 accused Nageshwar came to the house of deceased Shrawan Kumar, took Shrawan Kumar with him to his house under the pretext of dinner at his residence; (ii) Shrawan Kumar did not return to his house in the night, on the next day his dead body was found in the house of accused with six incised wounds and other injuries.

10. Mr. Prasad, learned counsel for the accused/appellant argued that in fact deceased Shrawan Kumar came to the house of the accused in the night in a drunken condition, tried to molest the wife of accused/appellant, therefore, wife of accused attacked Shrawan Kumar and committed his murder. Accused was not at his residence at that time.

11. On the other hand, Mr. U.N.S. Deo, learned counsel for the State/respondent supported impugned judgment of the trial Court.

12. Having heard counsel for the respective parties, we have perused the prosecution evidence. PW-1 Dilip Kumar Yadav, brother of the deceased, has stated that in the fateful night accused Nageshwar came at about 10.00 p.m. and took his brother Shrawan Kumar with him telling him to take dinner at his residence. Next day morning wife of accused sent intimation through Ramdev that the life of Shrawan Kumar is in danger, on which he went to the house of Nageshwar. The door of the house of Nageshwar was closed from outside with iron chain, on calling nobody responded, therefore, he

went to the Police Station Ramkola and gave report Ex.P/1 which was written by Kuldeep Dubey. Thereafter, police came to the house of Nageshwar, after removing the iron chain, the door was opened, he saw the dead body of his brother lying in the courtyard (*Parchhi*) of the house of accused. There were injuries on the hand and neck of his brother. Thereafter, police prepared inquest and other papers. He gave Dehati report Ex.P/2 and Dehati Nalishi Ex.P/3. PW-2 Lalebai, wife of the deceased has also stated that on the fateful night, wife of Nageshwar came to her house and called her husband to their house but her husband did not go, thereafter, in the night at about 9.00 to 10.00 o'clock accused Nageshwar came and took her husband with him. Next day morning Ramdev came to her house. He informed that life of her husband Shrawan Kumar is in danger. Hearing this news, she became unconscious, her brother-in-law Dilip Kumar took her to the house of Nageshwar where she saw the dead body of her husband lying in an injured condition. PW-4 Mohandas, son of Shrawan Kumar, has also corroborated the above evidence.

13. Lalebai has stated that her husband went to the house of accused on the invitation of the accused himself and in fact he accompanied the accused to his house. She has further stated that on the invitation of the wife of the accused, her husband refused to go, thereafter, when the accused came to take him, he went with him. It is incorrect to say that her husband had created terror in the village. PW-1 Dilip Kumar in his cross-examination has stated that it is incorrect to say that wife of the accused informed that deceased was trying to outrage her modesty, that is why she attacked him and committed his murder. These witnesses have not been cross-examined on the aspect that Nageshwar himself did not come to the house of the deceased, took him to his house where the dead body was found. From the evidence of the prosecution witnesses it is established that accused Nageshwar himself came to the house of deceased, requested him to accompany him to his house for having dinner with him, therefore, deceased Shrawan Kumar left for the house of the accused along with him and did not return in the night and the next day morning the police, on being informed by Dilip

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Kumar, found his dead body in the house of accused Nageshwar lying in the courtyard.

14. Now, coming to the question whether the defence has been able to establish the fact that in fact deceased Shrawan Kumar tried to molest the wife of accused Nageshwar and in that process, she attacked the deceased and committed his murder. After perusal of the evidence, we are of the considered opinion that the defence has not been able to raise plausible defence for the following reason that had the deceased Shrawan Kumar tried to outrage the modesty of wife of the accused Nageshwar, she might have raised cries and even when she attacked Shrawan Kumar in the night, she should have informed the villagers, village Kotwar and the Sarpanch about the incident, she could have gone to the police station to report against the act of the deceased but nobody was informed nor any report was lodged by her in the police station to this effect. In fact, Dilip Kumar (PW-1) went to the police station and thereafter, he came with the police, door was opened and dead body of Shrawan Kumar was found lying in an injured condition in the house of the accused. Therefore, burden was on the accused to explain the circumstances under which Shrawan Kumar was assaulted, he sustained grievous injuries and his dead body was found in his house. Moreover, the accused in his statement under Section 313 of the Cr.P.C. has simply denied the prosecution evidence and has not stated that in fact deceased came to their house, tried to outrage modesty of her wife, therefore, his wife attacked him and committed his murder. Even he has not stated that he was not at his residence. The wife of accused has not been examined by the accused to establish the defence raised by counsel for the accused.

15. While drawing attention of this Court towards the evidence of D.W.-1 Moharsai, Mr. Prasad argued that the accused was not at his residence at the time of incident when the accused came to their house to outrage modesty of his wife and in that process, his wife attacked him and committed his murder. Perusal of the evidence of this witness shows that Dilip Kumar informed him that wife of Nageshwar has committed the murder of his brother Shrawan Kumar

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as has been informed to him by Paklu, therefore, he went to the house of Nageshwar and saw the dead body of Shrawan Kumar where elder brother and younger brother of Nageshwar and wife of Nageshwar were present. Nageshwar was not present at his residence, he had gone to Pratappur market which is 50 km away from the village. This witness has stated that when he went to the house of the accused he was not at his residence but he has not stated that accused was not at his residence in the night when the crime was committed, nor such a statement was given by the accused that he was not at his residence in the fateful night.

16. Learned counsel for the appellant relied upon the judgment of the Apex Court in the matter of **Ramreddy Rajesh Khanna Reddy and another Vs. State of A.P.** reported in **(2006) 10 SCC 172** in which it has been held that the circumstantial evidence must establish all pieces of incriminating circumstances by reliable and cogent evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused, to base conviction on the circumstantial evidence.

17. Applying the settled principle of law which has been laid down by the Apex Court in the above judgment, we find that the evidence adduced in the present case by the prosecution establishes the fact that accused himself came in the night of 16.9.1991 to the house of Shrawan Kumar, took him to his house for having dinner and thereafter, next day morning the dead body of Shrawan Kumar was found in the house of the accused with six incised wound and other injuries on his dead body, which was lying in the *Parchhi* of the house of the accused and no explanation whatsoever has been put forth by the accused as to how Shrawan Kumar died in his house when he himself took him to his house for the purpose of taking dinner. The defence raised by the accused that in fact Shrawan Kumar has been murdered by his wife as he was trying to outrage her modesty, has not been established as discussed above.

18. In these circumstances, we are of the considered opinion that the circumstantial evidence adduced by the prosecution unerringly points towards the guilt of the accused. The only irresistible

conclusion can be drawn from the circumstantial evidence that the accused was author of the crime in question and there was no possibility of any third person coming to the house of the accused and commit the murder of Shrawan Kumar.

19. In the result, the appeal being devoid of substance is liable to be dismissed and is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Khan